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Attorneys for Inferno Investment, Inc.

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re

CRESTLLOYD, LLC,

Debtor in Possession.

Case No. 2:21-bk-18205-DS

Chapter 11

**OPPOSITION OF SECURED CREDITOR
INFERNO INVESTMENT, INC. TO
MOTION FOR AUTHORITY TO
DISBURSE FUNDS TO HANKEY
CAPITAL, LLC, A SENIOR SECURED
CREDITOR**

Date: May 26, 2022

Time: 1:30 p.m.

Crtrm.: 1639

**TO THE HONORABLE DEBORAH SALTZMAN, UNITED STATES BANKRUPTCY
JUDGE, CRESTLLOYD, LLC, AND ITS COUNSEL, AND ALL OTHER PARTIES IN
INTEREST:**

As this Court is aware, there are disputes between the lienholders of the real
property that was sold at auction about the relative priority of their liens and the amount

1 of their debts. There was prepetition litigation brought by Yogi Securities against Hankey
2 Capital and there were various disputes raised in connection with the motion to approve
3 the sale of the property. Among these disputes is that Hankey Capital's loan provided
4 that it was to finance the construction of the property to completion.¹ As set forth in
5 Exhibit D to the Construction Funding Agreement, Hankey dictated a procedure for
6 Crestlloyd to follow in order to get disbursements. Given that the amount of the loan
7 went from \$82.5 million to \$91 million to \$106 million in a period of twenty-two months, it
8 is questionable whether Hankey required Crestlloyd to comply with those procedures.²
9 The disbursement ledger for the Hankey Capital loan similarly calls into question whether
10 Hankey required Crestlloyd to comply with those same procedures. However, there is
11 now an additional question about the various liens and their priority because, as detailed
12 in the attached declaration of Julien Remillard, Inferno did not sign the Subordination
13 Agreement that is attached to the motion as Exhibit 5. The Subordination Agreement
14 was purported to be signed on October 30, 2018, but Crestlloyd forwarded to Inferno a
15 revised draft of the Subordination Agreement on October 31, 2018. See Exhibit "C" to
16 Julien Remillard's declaration. The impact of the Subordination Agreement is an open
17 question and yet another dispute to be resolved. If Inferno did not sign the Subordination
18 Agreement, it cannot be bound to all of its terms, including without limitation those that
19 provide that Inferno waives certain rights.

20 In connection with the sale motion, Crestlloyd indicated that all of the liens were
21 disputed and set forth various grounds for objection. Because of that and because
22 Inferno would not consent, the Court did not authorize payment of any of the disputed
23

24 ¹ A copy of the Construction Funding Agreement was attached as an exhibit to the
25 complaint that Hankey Capital filed prepetition against Crestlloyd. That complaint is
26 attached as Exhibit A. The Exhibits are being concurrently filed. The provisions that
state that the loan was intended to complete construction are at paragraphs 3.1(b),
3.1(e), 4.1, 6.9

27 ² It is worth noting that a significant portion of the \$82.5 million was used to pay off
28 another secured creditor and to fund an interest reserve.

1 liens. A few weeks after the sale hearing and because of their disagreements, the
2 lienholders participated in a virtual settlement conference facilitated by counsel for
3 Crestlloyd. Very little was accomplished at that conference except that the parties
4 agreed that they each required more information before they could intelligently discuss
5 resolution of their disputes. The parties exchanged lists of documents requested and
6 information needed. Inferno has produced the documents requested that are in its
7 possession, Yogi has produced the documents that it contends are responsive, but
8 Hankey Capital has produced nothing in response to those requests. It has not even
9 responded to emails inquiring about whether any documents could be expected.
10 Inferno's requests of Hankey Capital included construction budgets, documents
11 confirming the loan proceeds were being used for Crestlloyd construction costs, and
12 explanations about the interest calculation. Because Inferno has not been able to obtain
13 documents from Hankey voluntarily, it shortly expects to seek them through an
14 application under Federal Rule of Bankruptcy Procedure 2004.

15 Also in connection with that settlement conference, Inferno requested that
16 Crestlloyd produce copies of any forensic accounting or construction cost audit in its
17 possession, whether prepared by the state court receiver or Sierra Constellation as its
18 manager. Inferno has not received any documents in response, so presumably
19 Crestlloyd does not have those in its possession or done that level of analysis.

20 Because of these issues, when Inferno informed counsel for Crestlloyd that it
21 would consent to the payment to Hankey of \$82.5 million, it was expressly conditioned
22 upon the order providing that the payment is without prejudice to the rights of any party to
23 contest Hankey Capital's right to receive that payment, to contest the validity of Hankey
24 Capital's claim or the priority of its lien, or to seek and obtain disgorgement of any portion
25 of those funds that a court may determine Hankey Capital should not have received. The
26 Motion omits this critical condition so Inferno raises it here. Also because of these
27 disputes, Inferno was not agreeable to Hankey getting a full payment on account of its
28 lien and it remains opposed to Hankey collecting its interest. Hankey Capital has not

1 provided answers to the questions posed about calculation of interest and that, together
2 with the other disputes, are the basis for Inferno's continued objection to the payment to
3 Hankey Capital of any interest at this time.

4
5 DATED: May 26, 2022

Respectfully submitted,

6 SMILEY WANG-EKVALL, LLP

7
8 By: /s/ Kyra E. Andrassy

9 KYRA E. ANDRASSY

10 Attorneys for Inferno Investment, Inc.

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DECLARATION OF KYRA E. ANDRASSY

I, Kyra E. Andrassy, declare as follows:

1. I am a partner with Smiley Wang-Ekvall, LLP, attorneys of record for Inferno Investment, Inc. ("Inferno"). I am licensed to practice before this Court and the courts of the State of California. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the Opposition of Secured Creditor Inferno Investment, Inc. to Motion for Authority to Disburse Funds to Hankey Capital, LLC, a Senior Secured Creditor.

2. Attached as Exhibit "A" is a true and correct copy of the complaint filed prepetition by Hankey Capital, LLC, against Crestlloyd in Los Angeles Superior Court.

3. On April 7, 2022, I attended a meeting facilitated by counsel for Crestlloyd for Hankey Capital, Yogi Securities, and Inferno Investment to discuss their disputes about the liens against the property. The result of that meeting was a consensus that everyone required additional documents and information if any progress was going to be made. The parties agreed to exchange lists of documents and information requested of the other parties.

4. On April 8, 2022, I emailed counsel for Crestlloyd and Hankey Capital with a list of documents or information being requested by Inferno. I sent a list of several additional documents being requested of Hankey Capital on April 11, 2022. Among the documents and information that I requested of Hankey Capital were copies of signed loan documents, answers to two questions posed about the interest calculation, any construction budget that had been prepared by Crestlloyd or used by Hankey in connection with its approval and funding of the \$82.5 million loan, and documents confirming that the loan proceeds were being used for Crestlloyd construction costs. A true and correct copy of these emails is attached as Exhibit "B."

5. As of May 25, 2022, I have not received any of the documents or information requested of Hankey Capital, despite a couple of follow-up inquiries.

DECLARATION OF JULIEN RÉMILLARD

I, Julien Rémillard, declare as follows:

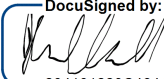
1. I am a director of Inferno Investment, Inc. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated and, if called as a witness, I could and would competently testify with respect thereto. I make this declaration in support of the Opposition of Secured Creditor Inferno Investment, Inc. to Motion for Authority to Disburse Funds to Hankey Capital, LLC, a Senior Secured Creditor.

2. In reviewing the Subordination Agreement that is attached to the motion to disburse funds to Hankey Capital as Exhibit 5, I realized that the signature in the signature block for Inferno Investment is not my signature. I then looked at the notary certificate attached to the Subordination Agreement that states that I personally appeared before the notary in Los Angeles, California on October 30, 2018. I was not in Los Angeles on October 30, 2018. I was in Montreal, Quebec, Canada.

3. This is supported by the fact that on October 30, 2018, Doug Witkins of Skyline Development, who acted as Crestlloyd's representative, emailed me a subordination agreement. The next day, on October 31, 2018, he emailed me an updated one. A true and correct copy of these emails is attached as Exhibit "C."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 26th day of May, 2022, at Miami, Florida.

DocuSigned by:

204101220C4641F...

Julien Rémillard

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3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
3200 Park Center Drive, Suite 250, Costa Mesa, CA. 92626

A true and correct copy of the foregoing document entitled (*specify*): **Opposition of Secured Creditor Inferno Investment, Inc. to Motion for Authority to Disburse Funds to Hankey Capital, LLC, a Senior Secured Creditor** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **5/26/2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **5/26/2022**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Overnight Mail:

Honorable Deborah J. Saltzman
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1634 / Courtroom 1639
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

5/26/2022
Date

Lynnette Garrett
Printed Name

/s/ Lynnette Garrett
Signature

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Kyra E Andrassy kandrassy@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Todd M Arnold tma@lnbyg.com
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- Jessica Wellington jwellington@bg.law, ecf@bg.law